

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Case No. 17-35009-KRH

Chapter 7

**M&M Asphalt Paving &
Grading, LLC,**

Debtor.

**MOTION BY CHAPTER 7 TRUSTEE TO APPROVE SALE OF PROPERTY
OF ESTATE BY AUCTION, FREE AND CLEAR OF INTERESTS,
PURSUANT TO §§ 363(b) AND (f)(3) OF THE BANKRUPTCY CODE**

Peter J. Barrett, Chapter 7 Trustee for the bankruptcy estate of M&M Asphalt Paving & Grading, LLC (the “Trustee”), hereby requests that this Court authorize him (a) to advertise, list and sell certain real property of the bankruptcy estate by auction, and to consummate such sale, and (b) to pay the commissions and expenses incurred in connection with the sale, using the services of Tranzon FOX, a licensed Virginia auction firm, such sale to be free and clear of interests in the real property. In support thereof, the Trustee states as follows:

1. On October 5, 2017 (the “Petition Date”), M&M Asphalt Paving & Grading, LLC (the “Debtor”) filed for relief pursuant to Chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and an Order for Relief was duly entered with respect thereto.

2. Peter J. Barrett was appointed Chapter 7 Trustee (the “Trustee”), and he continues to serve in that capacity.

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3. By order entered February 5, 2018 (Docket No. 47) this Court authorized the Trustee to employ Tranzon FOX to auction or sell by other means certain real property belonging to M&M Asphalt Paving & Grading, LLC (the “Debtor”) commonly known as 7218 King’s Highway, Montross (Westmoreland County), Virginia, Tax Map #19-43 (the “Real Property”). The Real Property is more particularly described as follows:

ALL that certain lot, parcel or tract of land, situate, lying and being in the Washington Magisterial District, Westmoreland County, Virginia, containing 10.6785 acres, more or less, and designated as Parcel A, on a plat of survey made by Edward G. Holsinger, C.L.S., dated October 18, 2005, entitled “Plat of Survey Showing the property of McDaniel & Sons Homebuilders, LLC”, a copy of which is recorded in Plat Book 736, at Page 66, in the Clerk’s Office of the Circuit Court of Westmoreland County, Virginia.

LESS AND EXCEPT that portion of the aforesaid property containing 0.2000 Acres, which was conveyed to The Board of Supervisors of Westmoreland County, Virginia by Deed dated November 21, 2005, recorded in the aforesaid Clerk’s Office in Deed Book 707, page 801 and shown on plat recorded in Deed Book 707, page 803.

Being the same real property conveyed to M&M Asphalt Paving and Grading, LLC, by Deed dated 22 October 2013, from William H. Casterline, Jr., *et al.*, Substitute Trustees, recorded in the Clerk’s Office, Circuit Court, County of Westmoreland, Virginia, in Deed Book 852, page 1028.

4. The Real Property is encumbered by a deed of trust dated January 24, 2014, recorded in the office of the Clerk of the Circuit Court of Westmoreland County, Virginia in Deed Book 855 at page 894 (the “Deed of Trust”). The Deed of Trust states that it was given to secure a note dated January 24, 2014 made by the Debtor in the original principal amount of One Hundred Fifty-Four Thousand Dollars (\$154,000.00) payable to the order of Branch Banking and Trust Company, 400 George Street, Fredericksburg, Virginia 22401. It is the Trustee’s understanding that the current balance due and payable to BB&T secured by the Deed of Trust

approximates \$110,000.00. There are also currently accruing real estate taxes accruing in the approximate amount of \$900.00.

5. Tranzon FOX has determined that the Real Property should be sold at auction. Accordingly the Trustee seeks authorization from this Court to proceed with the auction and sale of the Real Property.

6. As set forth in the Application of the Trustee seeking this Court's approval to employ Tranzon FOX (Docket No. 35) the Trustee proposes to compensate Tranzon FOX for its services pursuant to the terms set forth in the listing agreement (the "Listing Agreement") attached to that Application as Exhibit A (the "Compensation Terms"). As set forth in the Listing Agreement Tranzon FOX shall receive compensation as follows: Tranzon FOX will charge a Buyer's Premium of ten percent (10%), which will be added to the high bid and included in the total purchase price paid by the buyer to the Trustee. The Buyer's Premium will be added to the high bid to achieve the total (gross) purchase price. If the Real Property is sold at the auction and closing subsequently occurs, the Trustee shall pay Tranzon FOX fee of ten percent (10%) of the total (gross) purchase price payable in cash at closing, if approved by the Bankruptcy Court. Ten percent of the purchase price shall be the full extent of Tranzon FOX's compensation in connection with this transaction. In addition to any other fee from the above compensation, Tranzon FOX may pay a commission of up to three percent (3%) of the successful bid to any cooperating broker that follows Tranzon FOX's registration guidelines and whose registered buyer is the successful bidder and purchaser of the Property. If the Real Property is sold prior to the auction to any party, or is sold within ninety (90) days after the auction, the Trustee shall pay Tranzon FOX a fee consistent with the terms of the Listing Agreement.

7. The estate will pay the first \$1,500.00 of marketing expense.

8. Tranzon FOX may also incur extraordinary expenses and will be reimbursed for the same, all subject to approval by the Court.

9. The Trustee now seeks this Court's authorization to consummate the sale of the Real Property to a third-party upon the conclusion of the auction.

10. Based upon conversations with Tranzon FOX, the Trustee believes that the process for selling the Real Property will yield a sufficient purchase price. Furthermore, given the nature of the sales process, a requirement for further approval by the Court would likely hinder the purchase price for the Real Property and reduce the recovery for the Debtor's estate. Therefore, the Trustee is seeking approval to sell the Real Property to the highest bidder and to consummate such sale without further approval of this Court.

11. Following the payment or satisfaction of the routine costs associated with the sale of the Real Property, including real estate taxes due to Westmoreland County (approximately \$900.00 as of April 15, 2018) and fees and commissions due to Tranzon FOX pursuant to the Compensation Terms, the remaining proceeds from the sale shall be paid first to Branch Banking and Trust Company ("BB&T"), the holder of the note secured by the Deed of Trust, and, thereafter, the remainder to the Debtor's estate.

12. Because the sale of the Real Property is to be accomplished pursuant to Section 363(f)(3) of the Bankruptcy Code, the Trustee shall not accept any otherwise successful bid if the proceeds that would be payable to the Trustee upon consummation of a sale pursuant to such bid would not be sufficient to pay all expenses of the sale plus the amount necessary to pay in full all interests in the Real Property, including real estate taxes and the debt to BB&T secured by the Deed of Trust.

WHEREFORE, the Trustee hereby requests that this Court approve (i) the sale of the Real Property to the highest bidder in connection with the auction to be conducted by Tranzon FOX, such sale to be free of interests pursuant to § 363(f)(3) of the Bankruptcy Code, (ii) authorizing the Trustee to pay all fees, expenses and costs incurred in connection with the sale of the Real Property, including the amount necessary to pay in full real estate taxes payable to Westmoreland County and the debt secured by the Deed of Trust plus all fees or commissions due to Tranzon FOX; and (iii) granting such other relief as the Court deems just and proper.

Dated: February 14, 2018

Peter J. Barrett, Chapter 7 Trustee
By counsel

/s/ Augustus C. Epps, Jr.

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Counsel to Peter J. Barrett, Chapter 7 Trustee

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of February, 2018, a true and correct copy of the foregoing Application was served via electronic delivery and/or first class mail postage prepaid to:

M&M Asphalt Paving & Grading, LLC
127 Breezewood Drive
Colonial Beach, Virginia 22443

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/s/ Augustus C. Epps, Jr.
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